

OCA 86 - 0970

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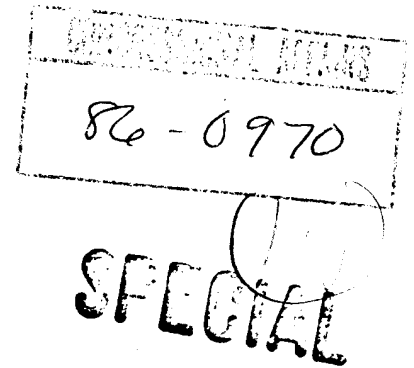
Gina Lombardi  
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**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

March 25, 1986

**LEGISLATIVE REFERRAL MEMORANDUM**



**TO:** SEE ATTACHED DISTRIBUTION LIST

**SUBJECT:** Department of Justice draft report on H.R. 3077, a bill to amend the Inspector General Act of 1978 to establish IG offices in certain departments, and for other purposes.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than April 4, 1986.

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

  
**James C. Murr for  
Assistant Director for  
Legislative Reference**

**Enclosure**

cc: John Cooney                      Steve Mertens  
Karen Wilson                      Susan DuVal

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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Jack Brooks  
Chairman  
Committee on Government Operations  
House of Representatives  
Washington, D.C.

**DRAFT**

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on H.R. 3077, a bill "to amend the Inspector General Act of 1978 to establish offices of Inspector General in certain departments, and for other purposes." We oppose strongly enactment of H.R. 3077.

When the Inspector General Act was enacted in 1978, Congress intentionally did not provide for the establishment of an Inspector General at the Department of Justice. Since enactment, the Department has studied and reviewed several proposals which would have created a statutory Inspector General in the Department of Justice. H.R. 3077, which would create a statutory Inspector General at the Department of Justice, is similar to the previous proposals. The introduction of H.R. 3077, our previous reviews, and the experience under the Act generally, has allowed us to reevaluate the whole concept of an Inspector General at the Department of Justice. This review has led us to the conclusion that it would be counterproductive to establish a Department of Justice Inspector General.

A fundamental principle underlying our conclusion is the need to maintain the authority of the Attorney General as the nation's chief law enforcement officer. The Office of the Attorney General is the final and ultimate repository of prosecutorial power. The power of investigation, indictment and prosecution is of far greater breadth than the proper responsibilities of any Inspector General. The responsibilities--to investigate, to prosecute, or to institute litigation, when necessary to uphold Federal law--require that broad based discretion be entrusted to the Attorney General. These elements constitute an important underpinning of the effective enforcement of the law. Under present law, one individual, the Attorney General, is responsible and accountable for carrying out these functions.

The distortion and diffusion of the Attorney General's responsibilities would be direct and significant. Under

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section 4(a) of the Act, an Inspector General provides policy direction for investigations. Under section 3(a), the head of an agency may not preclude or interfere with an investigation of an Inspector General. Providing policy direction for investigations and having overall responsibility for the conduct of these activities is presently the obligation of the Attorney General. The result will be a distortion of this responsibility and a lessening of accountability.

As a general matter, it appears that the Attorney General would be powerless to direct the Inspector General to postpone or delay an investigation that the Attorney General determined could jeopardize an ongoing investigation or litigation. This deleterious impact would manifest itself by infringing upon the responsibilities of the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration and the Commissioner of the Immigration and Naturalization Service. An Inspector General would have statutory authority to interfere with any ongoing investigation being conducted by these law enforcement agencies. An Inspector General would have similar capabilities to review and interfere with decisions made by the various Assistant Attorneys General in charge of the litigating divisions.

The Act's reporting requirements, set forth in section 5, are also inconsistent with the Department's obligations and duties. The reports that are mandated do not address the need to protect from disclosure ongoing investigations, confidential sources, classified information, litigation material and other sensitive information. The Act's reporting requirement substantially increases the risk that information will be compromised.

H.R. 3077 ignores the effective mechanism established within the Department to investigate allegations of impropriety and to carry out extensive audit capabilities. Since its inception prior to enactment of the Inspector General Act, the Office of Professional Responsibility (OPR) has had the duty to monitor the integrity and professionalism of the Department's personnel. The Counsel to OPR is accountable to the Attorney General. He has complete freedom to determine the scope, depth, direction and duration of the office's investigations. During OPR's existence, no one has challenged the thoroughness and integrity of the manner in which it has carried out its responsibilities.

Similarly, the Department's Audit Staff has the authority to conduct and coordinate effectively audit efforts within the Department. The Assistant Attorney General for Administration is responsible for formulating Department-wide audit policies, standards and procedures. He directs both internal audits of all

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organizations, programs and functions of the Department and audits of expenditures made under the Department's contracts and grants. In terms of its independence, the Audit Staff carries out its responsibilities under the direction of the Assistant Attorney General for Administration, who reports to the Deputy Attorney General. For audits of programs and activities of the Justice Management Division, which the Assistant Attorney General for Administration heads, the Audit Staff reports directly to the Attorney General and the Deputy Attorney General. A broader mandate would be difficult to conceive. The history of OPR and the Audit Staff demonstrates that the Department has instituted comprehensive, coordinated, independent and effective mechanisms to deal with financial and professional misconduct.

We also question H.R. 3077's proposal to merge the evaluation, audit and internal investigation units of the Department. This structure would undercut the role of OPR and weaken the effectiveness of the present system. The internal investigation units of the Department, presently accountable to OPR, would be consumed into the Inspector General's office. The division of responsibility between OPR and the Inspector General would be vague with a resulting decrease in the quality of all investigations. Moreover, with regard to the evaluation and review units of the Attorney General and bureau heads, these units are part of management and should remain separate from an Inspector General. These units are utilized to formulate specific management initiatives, allocate resources, and review organizational structures. These functions are primary aspects of management.

We also object to section 3 of H.R. 3077, which creates a new section 8B to the Inspector General Act. Section 8B would require that for agencies without a statutory Inspector General, there be no more than one audit unit and that the head of the audit unit be appointed by the agency head from the competitive service. Section 3 would preclude the head of an agency from preventing an audit unit from completing any audit or investigation or from issuing a subpoena. The authorities of a statutory Inspector General, set forth in sections 4, 5, 6 and 7 of the Act, would be conferred on the audit unit head.

Section 3 of H.R. 3077 would create a de facto Inspector General. The provision's structure creates the same distortion of responsibility and undermining of authority as the Inspector General Act itself. We oppose these attempts to weaken the Attorney General's ability to carry out the Department's law enforcement and litigation functions.

In conclusion, for the reasons set forth above, we oppose enactment of H.R. 3077.

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The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady  
Acting Assistant Attorney General